

**US DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

GREGORY ROTH
13 Golfside Circle
Canandaugia, NY 14424

and

SUSAN ROTH
13 Golfside Circle
Canandaugia, NY 14424

Plaintiffs,

v.

CAL-ARK INTERNATIONAL, Inc.
c/o Agent, Thomas Bartholomew
12024 Highway I-30
Mabelvale, AR 72103

and

**ARKANSAS EQUIPMENT LEASING,
Inc.**
c/o Agent, Thomas Bartholomew
12024 Highway I-30
Mabelvale, AR 72103

and

JOHN SHIREY
500 Kizer Lane
Saulsbury, TN 38067

Case No.:

Judge

**COMPLAINT WITH JURY DEMAND
ENDORSED HEREON**

Defendants.

Gregory Roth and Susan Roth file the following complaint.

OVERVIEW

This is a clear liability collision between an automobile in which Plaintiff, Gregory Roth, was a passenger, and a tractor trailer which occurred on October 14, 2018 on IR 71 in the Township of Montville, County of Medina, State of Ohio. The tractor trailer driver was northbound on IR 71. Plaintiff was traveling southbound on IR 71. The tractor trailer swerved to avoid a car slowing in front of him. The tractor trailer went off the west side of the northbound roadway, crossing the grassy medium and entered the southbound lane of travel, striking the Plaintiff and pushing his vehicle into the guardrail and sound barrier wall of the west side of the southbound roadway. Plaintiff sustained severe injuries for which he was transported by Life Flight from the accident scene.

PARTIES

1. Gregory Roth and Susan Roth were a domiciliary and citizen of the State of New York, residing in Ontario County.
2. Defendant Cal-Ark International, Inc. (“Cal-Ark”) is registered with the Federal Motor Carrier Safety Administration with a USDOT number of 546354 and is a business entity organized and existing under the laws of the State of Arkansas with its principal place of business in Little Rock, Arkansas. Cal-Ark has designated Thomas Bartholomew, located at 12024 Highway I-30, Mabelvale, AR 72103, as its agent for the purposes of service of process of this complaint under 49 C.F.R. §366.

3. Defendant Arkansas Equipment Leasing, Inc. ("Arkansas Leasing") is a business entity organized and existing under the laws of the State of Arkansas with its principal place of business in Mabelvale, Arkansas. Arkansas Leasing has designated Thomas Bartholomew, located at 12024 Highway I-30, Mabelvale, AR 72103, as its agent for the purposes of service of process of this complaint under 49 C.F.R. §366.
4. Defendant John Shirey resides at 500 Kizer Lane, Saulsbury, TN 38067. He is a domiciliary and citizen of the State of Tennessee.

JURISDICTION and VENUE

5. Plaintiffs' claims are brought under 28 U.S.C. § 1332(a)(1), based upon diversity of citizenship.
6. Since no Plaintiffs and no Defendants are citizens of Ohio and the amount in controversy (exclusive of costs and interest) exceeds \$75,000, diversity jurisdiction exists in this Honorable Court.
7. Venue is appropriate in this Court as this action arises from a motor vehicle accident occurring in Montville Township, Medina County, Ohio, which is located in this judicial district.

FIRST CAUSE OF ACTION
Negligence of John Shirey

8. On October 14, 2018, Plaintiff Gregory Roth was a passenger in a vehicle driving southbound on IR 71. Defendant John Shirey was driving northbound on IR 71 and failed to maintain control of his tractor trailer.

Defendant John Shirey swerved to avoid a slowing vehicle in front of him, causing his tractor trailer to lose control.

9. Defendant John Shirey crossed the grassy median and entered the southbound lanes of travel.
10. Defendant John Shirey's tractor trailer struck the vehicle that Plaintiff was a passenger in, pushing Plaintiff's vehicle into the guardrail and sound barrier.
11. Defendant John Shirey had a duty to drive his semi-tractor trailer in a safe and reasonable manner, to obey all traffic laws, obey all traffic devices and to recognize and yield to slow or stopped traffic.
12. On October 14, 2018, Defendant John Shirey failed in the above-mentioned duties and is therefore negligent.
13. Defendant John Shirey's negligence was the direct and proximate cause of Gregory Roth's injuries.
14. As a direct and proximate result of the negligence of all defendants, Plaintiff Gregory Roth has lost past and future wages and his earning capacity has been diminished.
15. As a direct and proximate result of Defendant John Shirey's negligence, Plaintiff Gregory Roth incurred medical bills for the treatment of his injuries directly resulting from this collision.
16. As a direct and proximate result of Defendant John Shirey's negligence, Plaintiff Gregory Roth experienced physical and mental pain and

suffering and lost the ability to perform usual activities, resulting in a diminished quality of life.

17. Defendant John Shirey's actions demonstrate a conscious disregard for the rights and safety of Gregory Roth and the rest of the motoring public, acting with reckless indifference to the consequences of others despite being aware of his conduct and knowing there was a great probability of causing substantial harm.
18. Accordingly, Plaintiff Gregory Roth demands both compensatory and punitive damages against Defendant John Shirey.

SECOND CAUSE OF ACTION

Vicarious Liability of Defendants Cal-Ark International, Inc. and Arkansas Equipment Leasing, Inc.

19. All allegations and causes of action above are incorporated into this cause of action by reference.
20. At all times relevant, Defendant John Shirey was the employee, agent, servant, or independent contractor for Defendant Cal-Ark International, Inc. and/or Arkansas Equipment Leasing, Inc. Accordingly, Defendants Cal-Ark and/or Arkansas Leasing are vicariously liable for the acts of Defendant John Shirey described in the causes of action above.
21. Regardless of the employment or agency relationship, Defendant Cal-Ark is an interstate motor carrier responsible for the acts of the Defendant driver, John Shirey.

THIRD CAUSE OF ACTION

*Strict Liability of Defendants Cal-Ark International, Inc. and
Arkansas Equipment Leasing, Inc.*

22. All allegations and causes of action above are incorporated into this cause of action by reference.
23. Defendants Cal-Ark International, Inc. and Arkansas Equipment Leasing, Inc. are and were the registered owners of the USDOT number 546354 displayed on the tractor trailer involved in this collision and are therefore responsible for the acts of Defendant John Shirey.

FOURTH CAUSE OF ACTION

Negligence of Defendants Cal-Ark International, Inc. and Arkansas Equipment Leasing, Inc.

24. All allegations and causes of action above are incorporated into this cause of action by reference.
25. Defendants Cal-Ark and Arkansas Leasing had a duty to act reasonably in hiring, instructing, training, supervising and retaining its drivers and other employees and agents, including Defendant John Shirey, and to promulgate and enforce policies, procedures, and rules to ensure that its drivers and vehicles were reasonably safe.
26. Defendants Cal-Ark and Arkansas Leasing had a duty to exercise reasonable care in entrusting its vehicles and equipment to responsible, competent and qualified drivers.
27. Defendants Cal-Ark and Arkansas Leasing failed in the above-mentioned duties and was therefore negligent.

28. Defendants Cal-Ark and Arkansas Leasing's negligence was the direct and proximate cause of Gregory Roth's injuries and the damages described in this Complaint.
29. Defendant's Cal-Ark and Arkansas Leasing's actions demonstrate a conscious disregard for the rights and safety of Plaintiff Gregory Roth and the rest of the motoring public, acting with reckless indifference to the consequence to others despite being aware of its conduct and knowing there was a great probability of causing substantial harm.
30. According, Plaintiff demands both compensatory and punitive damages against Defendants Cal-Ark and Arkansas Leasing.

FIFTH CAUSE OF ACTION
Consortium Claim

31. All allegations and causes of action above are incorporated into this cause of action by reference.
32. Plaintiffs Gregory Roth and Susan Roth were married at the time of this crash and remain married.
33. As a direct and proximate result of Defendants' negligence and statutory violations, Susan Roth has lost the companionship, society, services and consortium of Gregory Roth.

WHEREFORE, Plaintiffs respectfully requests judgment in their favor and against all Defendants, in an amount that is just and fair and in excess of seventy-five thousand dollars (\$75,000.00) (exclusive of costs and interest), in

addition to punitive damages, costs and other relief that this Honorable Court deems just under the circumstances.

Respectfully submitted,

/s/ Henry W. Chamberlain
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JURY DEMAND

Plaintiffs hereby demand a trial by jury on all triable issues.

Respectfully submitted,

/s/ Henry W. Chamberlain
Henry W. Chamberlain (0046682)
The Chamberlain Law Firm